

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

<b>Frank Weaverling,</b>	)	C/A No. 4:05-943-CMC-TER
	)	
Petitioner,	)	
	)	
v.	)	<b>OPINION AND ORDER</b>
	)	
	)	
<b>Mr. Oscar A. Faulkenberry,</b>	)	
<b>Warden; Mr. Jon Ozmint,</b>	)	
<b>S.C.D.C., Director; and Henry</b>	)	
<b>McMaster, Attorney General</b>	)	
<b>for South Carolina,</b>	)	
	)	
Respondents.	)	
	)	

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Petitioner, an inmate at the Kershaw Correctional Institution in Kershaw, South Carolina, acting *pro se*, filed a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 on March 30, 2005. Respondents filed a motion for summary judgment on June 1, 2005. In an order filed June 3, 2005, the court advised Petitioner of the procedures for responding to the motion for summary judgment and the consequences if no response was filed. Petitioner failed to file any response.

In accordance with this court's order of reference and 28 U.S.C. § 636(b), this matter comes before the court with the Report and Recommendation of United States Magistrate Judge Thomas E. Rogers, III. The court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the

recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b).

Based on his review of the record, the Magistrate Judge has recommended that the action be dismissed for lack of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Petitioner failed to respond to Respondents' motion for summary judgment. The Magistrate Judge further recommended in the alternative that Respondents' motion for summary judgment be granted as the petition is barred by the statute of limitations. The Magistrate Judge advised Petitioner of his right to file objections to the Report and Recommendation and the consequences if he failed to do so. Petitioner has filed no objections and the time for doing so has expired.

After reviewing the Petition, the motion, and the Report and Recommendation of the Magistrate Judge, the court agrees with the recommendation of the Magistrate Judge. Accordingly, the Report and Recommendation of the Magistrate Judge is adopted and incorporated by reference. Respondents' motion for summary judgment is granted and the Petition is **DISMISSED WITH PREJUDICE**.

**IT IS SO ORDERED.**

s/ Cameron McGowan Currie

CAMERON MCGOWAN CURRIE  
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina  
August 17, 2005

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